THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE Ms JUSTICE G. ROHINI

WRIT PETITION No.24097 of 2007

ORDER: (Per the Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a *writ of mandamus* declaring the notice given by the 1st respondent under Section 147 of the Income Tax Act, 1961, as invalid and without jurisdiction.

The petitioner - M/s M.K. Exports, is a firm carrying on business of procuring prawns and shrimps from prawn/shrimp farms and exporting the same to foreign countries against purchase orders. It has been filing income tax returns with the 1st respondent regularly. It is its case that during the financial year (assessment year 2001-02) it did export business and made direct export turnover of Rs.9,07,41,125/- and earned a profit of Rs.16,72,137/-. It also made supporting manufacturer turnover of Rs.2,79,61,444/-and incurred a loss of Rs.31,506/-. Accordingly, a claim was made to set off the loss against the profit made in direct export as provided in the fifth proviso to the amended Section 80HHC(3) of the Income Tax Act, 1961 (for short, "the Act"). According to the petitioner, the 1st respondent accepted its return for the assessment year 2001-02.

The petitioner submits that the 1st respondent, on 22.1.2007, issued a notice under Section 148 of the Act, calling for return for the assessment year 2001-02, without disclosing the reasons for re-opening the assessment. Thereupon, the petitioner addressed a letter requesting to furnish reasons for re-opening the assessment. The 1st respondent by letter dated 9.3.2007 furnished reasons stating that in the case of the petitioner, 90% of export incentive i.e., income on sale of DEPB licences was taken as eligible profit for deduction under

Section 80HHC; that the assessee has filed its return of income on 31.10.2001 i.e., prior to the amendment to Section 80HHC(3) of the Act, and that in the absence of any evidence to prove that the assessee fulfills the conditions laid down under third proviso to Section 80HHC(3)(1)(c), the deduction under Section 80HHC is not allowable. It is further stated that the taxable income has been arrived at by the assessee after claiming excessive relief and, thereby, the income chargeable to tax has escaped assessment for the assessment year 2001-02. Pursuant thereto, the petitioner gave a reply stating that in the case of the petitioner the two conditions prescribed by the third proviso to the amended Section 80HHC were not applicable. It is the case of the petitioner that the definition "export turnover" is governed by the provisions of Sections 80HHC(3) and (3A), but not by Section 80HHC(1A) and since the direct export sale is less than Rs.10.00 crores, the amended second proviso to Section 80HHC is applicable, but not the third proviso and, accordingly, it is not required to satisfy the two conditions of the latter proviso. It is submitted that the assessment was re-opened without having any specific material leading to a reason to believe that income escaped assessment and that assessment cannot be re-opened first and then the Assessing Officer cannot go in search of reasons. It is also submitted that the proceedings under Section 147 read with Section 148 of the Act are not valid as there is no valid reason to reopen the assessment. It is further submitted that the action of the 1st respondent in calling for various particulars for completion of the assessment, instead of dropping the proceedings initiated under Section 147 of the Act, taking into account the reply given by the petitioner dated 20.3.2007, and further proceeding to issue a notice dated 3.8.2007 under Section 143(2) of the Act fixing the date of hearing, as 16.8.2007, is illegal.

Heard learned counsel for the petitioner and perused the material on record.

In this writ petition, the petitioner questions the notice issued by

the 1st respondent requiring it to attend the office of the 1st respondent on 16.8.2007, or produce any documents, accounts and any other evidence in support of the return filed by it for the assessment year 2001-02. Since the notice issued by the 1st respondent is only an intimation calling upon the petitioner to support the return filed by it for the assessment year 2001-02 and no final order has been passed, we do not find any ground whatsoever warranting interference by this Court.

The writ petition, therefore, fails and is accordingly dismissed. No costs.

T. MEENA KUMARI, J.

G. ROHINI, J.

Date: 26-11-2007
Kgr

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE Ms JUSTICE G. ROHINI

WRIT PETITION No.24097 of 2007

26th November, 2007.

Between:

M/s M.K. Exports, represented by its Partner –
M. Seshavatharam. .. Petitioner.

And

The Income Tax Officer, Ward-I,
Bhimavaram and another. .. Respondents.